



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-S-

DATE: OCT. 2, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that she is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The record reflects that, at the time of filing, the Petitioner was concurrently pursuing a doctorate degree in petroleum engineering and working part time as a research assistant at USC.⁴ She asserted that her research was aimed at advancing "understanding of the complex dynamics at play in oil and gas reservoirs." The Director issued a request for evidence (RFE) advising the Petitioner of the *Dhanasar* framework. With respect to her proposed endeavor, the RFE noted the temporary nature of her studies and fellowship, and asked her to "provide updated information and evidence regarding your current employment and your plans for future work in your industry and when this work would commence."⁵

In response to the Director's RFE, the Petitioner provided a statement discussing her "Future Research Plans" and "Future Job Opportunities." With respect to her "Future Research Plans," she indicated that she intends to pursue research in three areas: (1) "Modeling of underlying physics in unconventional reservoirs using molecular dynamics simulation," (2) "Development of fast and high accuracy reservoir management tools using Data Analytics and reservoir simulation," and (3) "Developing strategies for successful carbon sequestration." Regarding her "Future Job Opportunities," the Petitioner asserted that she received communications about post-doctoral positions at [REDACTED] and [REDACTED].

She further stated: "I have been contacted by the [REDACTED] the

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The record reflects that the Petitioner earned a master of science degree in petroleum engineering from [REDACTED] in May 2016.

⁴ Her initial submission included a letter from the director of USC's petroleum engineering program stating that the Petitioner is "performing research . . . in conjunction with earning her Ph.D. in Petroleum Engineering. In her research position, [the Petitioner] performs various studies, including conducting research in frontier areas of reservoir simulation and forecasting." According to the Petitioner's Form I-140 and Form ETA-750B, Statement of Qualifications of Alien, she was working 20 hours per week in her position at USC as a research assistant and Ph.D. fellow.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, USCIS will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

biggest oil producer in California (emails attached), as well as by startup companies such as [REDACTED] which work on implementing a data-and-physics model for optimizing production from oil and gas reservoirs (emails attached).” The Director denied the petition, stating that “the details about these jobs and what they entail were not provided. This would allow us to determine if these sources will support work on her three focused areas of future research.”

In the appeal brief, the Petitioner “proposes to perform advanced research on oil and gas extraction and management in order to improve the techniques and tools available to that field.” She provides a March 2018 letter from [REDACTED] indicating that she has accepted a position as a reservoir engineer with that company. This letter, however, does not indicate what, if any research the Petitioner will undertake on behalf of [REDACTED].⁶ Despite the Director’s request for clarification, the Petitioner has not provided sufficient information and evidence to establish whether her proposed endeavor will involve research in the areas she previously identified or whether her prospective work as a petroleum and reservoir engineer otherwise stands to have broader implications rising to the level of having national importance. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The record does not sufficiently explain the Petitioner’s proposed endeavor(s) such that we are able to determine, without additional information and evidence, that her work will have both substantial merit and national importance and that she is well positioned to advance her proposed endeavor. Furthermore, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of M-S-*, ID# 1559104 (AAO Oct. 2, 2018)

⁶ On appeal, the Petitioner argues that “it is inconceivable that an engineer in the twenty-first century could possibly carry out engineering duties without performing research.” While counsel provides the Merriam-Webster definition of “research” and argues that positions in the engineering occupation inherently involve some degree of research, the issue here is the specific endeavor the Petitioner proposes to undertake and whether such work has broader implications in the field.